

## **Freedom of Information Act 2000 (the Act)**

### **Decision notice**

**Date:** 14 July 2021

**Public Authority:** Department for Work and Pensions

**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

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1. The complainant has requested the number of messages received onto the Child Maintenance system and a breakdown of how long it took to respond.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to rely on section 12(1) to refuse to comply with the request as to do so would exceed the appropriate limit and it has complied with its obligation to provide advice and assistance under section 16.
3. The Commissioner finds, however, that DWP has breached section 17(5) of the Act as it did not issue its section 12 refusal notice within the statutory timeframe of 20 working days.
4. The Commissioner does not require DWP to take any steps in relation to this request.

#### **Request and response**

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5. On 4 March 2020, the complainant wrote to DWP and requested information in the following terms:

*"Further to your FOI response 07500<sup>1</sup> dated 4th March 2020:*

*1. Please could provide [sic] a month-by-month breakdown of the total number of messages/correspondence recorded in the "Child Maintenance System".*

*2. Please could you provide a breakdown of the length of time taken for the CMS to respond to all messages/correspondence received from parents recorded in the "Child Maintenance System". Please provide a breakdown as follows:*

*Within 3 months: X messages/correspondence (Y%)*

*Within 6 months: X messages/correspondence*

*Within 9 months: X messages/correspondence (Y%)*

*Within a Year: X messages/correspondence (Y%)*

*Within 18 months: X messages/correspondence (Y%)*

*Within 2 years: X messages/correspondence (Y%)*

*Over 2 years: X messages/correspondence (Y%)"*

6. DWP provided its response on 18 March 2020. DWP provided the monthly volumes received for the last six months and explained that it did not hold information on the time taken to respond. DWP explained that it could provide the volumes of messages and the overall percentage volume clearance of inbound service requests but it could not provide the time taken to clear the service request. DWP explained that clearance will depend on what action is required. DWP further explained that should the information contained in the inbound correspondence mean that an update in circumstances is required, then a change of circumstances service request will be raised and this will be measured.
7. The complainant requested an internal review on 18 March 2020. They disputed that the figures provided were correct and that DWP does not have records of how long it takes to deal with requests. They set out that DWP had confirmed in other FOI requests that it has time based

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<sup>1</sup> The complainant previously made a request in similar terms for messages received via DWP's online portal. DWP provided the complainant with the number of messages received but stated that it did not hold the times taken to respond.

Key Performance Indicator (KPI) targets. The complainant asked DWP to provide the “percentage volume clearance data” that DWP referred to in its response.

8. DWP provided the outcome of its internal review on 1 April 2020 and upheld its original response. DWP confirmed that it does have formal KPIs in relation to certain activities which require time bound clearances to be measured, however, it confirmed that the clearance of inbound service requests do not have an associated KPI.
9. DWP provided the percentage clearance figures for inbound correspondence for September 2019 to February 2020.

### **Scope of the case**

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10. The complainant wrote to the Commissioner on 19 May 2020 to complaint about the handling of their request for information.
11. This request is one of a series of requests from the complainant made to DWP about the Child Maintenance Service in which DWP took the position when responding that it did not hold the requested information, or parts of the requested information.
12. During the course of the investigation, DWP amended its position and provided the complainant with a fresh response on 24 March 2021. DWP relied on section 12(2) of the Act to refuse to confirm or deny whether it held the requested information as to do so would exceed the appropriate limit. DWP explained that it would need to check individual cases in order to determine and identify each action required and the date that the final action was taken and completed.
13. DWP acknowledged its obligations under section 16 to provide advice and assistance. DWP explained that as the request is so specific in nature, it could not provide specific advice under section 16.
14. DWP stated that it had previously advised the complainant that it recorded the volumes of messages received on the self-service portal and it had provided these volumes. DWP also confirmed that it does not link the number of disparate actions taken on a case on the Child Maintenance System to the receipt of a message received via the portal. DWP confirmed that its digital partners are developing systems and a new range of management information to specifically capture the message and clearance times.

15. DWP provided a link to the published Child Maintenance Service statistics<sup>2</sup>.
16. On 8 April 2021, the complainant confirmed that they disputed DWP's position that section 12(2) applied.
17. DWP subsequently confirmed that it considered the appropriate exemption is section 12(1).
18. The Commissioner therefore considers that the subsequent scope of this case is to determine whether DWP is entitled to rely on section 12(1) to refuse to comply with this request. She will also determine whether DWP has provided adequate advice and assistance in accordance with section 16.

## Reasons for decision

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### Section 12: cost of compliance exceeds the appropriate limit

19. Section 1(1) of the Act states:

*"Any person making a request for information to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds the information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

20. Section 12(1) of the act states:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

21. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>3</sup> (the Fees Regulations) at £600 for central government departments. The Fees Regulations also specify that the cost of complying with a request must

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<sup>2</sup> <https://www.gov.uk/government/collections/statistics-on-the-2012-statutory-child-maintenance-scheme>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2004/3244/contents/made>

be calculated at a flat rate of £25. This means that DWP may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to do so.

22. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in;
  - determining whether it holds the information;
  - locating the information, or a document holding it;
  - retrieving the information, or a document holding it; and
  - extracting the information, or a document holding it.
23. Section 12 explicitly states that public authorities are only required to estimate whether the cost of compliance with a request would exceed the appropriate limit, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be reasonable; she expects it to be sensible, realistic and supported by cogent evidence.

### **DWP's position**

24. DWP explained that messages from the online portal present in the Child Maintenance System as inbound correspondence ("manage inbound service request") which creates a prompt for action. DWP explained that the manage inbound service request is an alert service request which prompts the case worker that some action is required and that once this is opened or read, the alert is closed.
25. DWP explained that the case worker would then need to raise the relevant service request appropriate to the action that is required and that this could relate to one activity or number of activities with a 'string' or 'chain' of service requests to complete all actions required.
26. DWP explained that it receives, on average, 100,000 messages per month and it would need to create a caselist of cases where a portal message had been received. DWP explained that it would then need to open the individual cases and examine the case to see whether any action was taken as a direct result of receiving a message through the portal and note the date the action was taken. DWP confirmed that depending on the nature of the message, the action may not be completed until several weeks after the initial message had been received.

### **The Commissioner's position**

27. The Commissioner accepts that DWP cannot comply with the request within the appropriate limit of 24 hours. The request does not include a timeframe for which the complainant is seeking the breakdown of figures and therefore DWP is required to consider all messages that it has a record for. The Commissioner notes that the longest category that the complainant is seeking figures for is "Over 2 years" and, on the basis of DWP's estimate of 100,000 messages per month, DWP would need to consider a minimum of 2,400,000 actioned messages.
28. The Commissioner has considered whether reviewing cases on the basis of individual messages would lead to duplication of work and whether an alternative approach could reduce the workload. The Commissioner has reviewed the published statistics provided to the complainant at internal review and notes that, as at March 2020, DWP held Child Maintenance cases for approximately 750,000 children. The Commissioner considers that even if DWP were to review only its open cases to determine the time taken to action any messages received on the individual cases, it could not do so within the appropriate limit.
29. The Commissioner notes that DWP has confirmed that it can provide the number of service requests cleared in a given time period but she accepts that this data does not provide the length of time that had elapsed since DWP received the correspondence that triggered the creation of the service request.
30. The Commissioner also notes that DWP has confirmed that it has time-based standards for certain activities however as the request covers all messages received via the online portal, the Commissioner accepts that DWP would be required to review individual cases for messages falling outside of these activities.
31. It is at DWP's discretion how it records the information it holds to meet its business and statutory requirements. The Commissioner cannot require DWP to hold child maintenance cases in formats that can be searched by a specific data variable.
32. The Commissioner accepts that in order to collate the requested information, DWP would be required to review up to 750,000 cases individually.
33. As set out above, the appropriate limit for central government departments is 24 hours, or 1440 minutes. The Commissioner accepts that it would not be possible to conduct the required search and review of individual cases within the appropriate limit. DWP is not required to work up to the cost limit and is only required to provide an estimate for the purposes of section 12.

34. The Commissioner's decision is that DWP is entitled to rely on section 12(1) of the Act to refuse to comply with the request.

### **Section 16: Duty to provide advice and assistance**

35. Section 16 (1) of the Act states:

*"It shall be the duty of the public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, the persons who proposed to make, or have made, requests for information to it"*

36. The Commissioner has issued guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12<sup>4</sup>. Paragraph 59 of the guidance states :

*"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:*

- either indicate if it is not able to provide any information at all within the appropriate limit;*
  - provide an indication of what information could be provided within the appropriate limit; and*
  - provide advice and assistance to enable the requestor to make a refined request."*
37. DWP explained to the complainant that it was unable to provide advice on how to refine the request.
38. DWP confirmed to the Commissioner that providing data based on just one day's messages would still require it to review approximately 4000 messages and this would exceed the appropriate limit.
39. The Commissioner notes that DWP provided the complainant with a link to its published statistics and the complainant confirmed that DWP has previously informed them that it has KPIs for actions related to "mandatory reconsideration" and "variations" requests but not all messages received onto the Child Maintenance System.

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

40. In light of the volume of messages received onto the Child Maintenance System, the Commissioner is unable to determine what further advice could be provided to the complainant in relation to this request. As such, the Commissioner accepts that in the specific circumstances of this case, DWP has complied with section 16 by advising that it cannot aid the complainant further in refining the request.

### **Section 17: Refusal notice**

41. Section 1 (1) of the act states that:

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of description specified in the request; and*

*(b) if that is the case, to have that information communicated to him".*

42. Section 17(5) states that:

*"A public authority which, in relation to any requests for information, is relying on the claim that section 12 or 14 applies most, within the time for complying with section 1(1), give the applicant and notice stating that fact."*

43. As DWP confirmed that it was relying on section 12 outside of the statutory time for compliance, it has breached section 17(5) of the Act.

### **Other Matters**

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44. The Commissioner wishes to place on record her understanding of the immense pressure placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising frontline services and continuing to meet their obligations under the Act.

45. However, the Commissioner has concerns regarding the handling of this request. The Commissioner would expect a public authority with DWP's resources and expertise to understand the basic principles of the Act, particularly that information does not need to be held in discrete documents in order to be held for the purposes of the Act.

46. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying the procedural sections of the



Act. Specifically, DWP should ensure that its staff are familiar with her guidance on determining whether information is held<sup>5</sup>.

47. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure that requests are handled correctly. Where appropriate, she expects the wider DWP to use this resource, and her published guidance, to improve its request handling in future.

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<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1169/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf)

## Right of appeal

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48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## Signed

**Victoria Parkinson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**